REMARKS

This request for reconsideration is in response to the Office Action of April 8, 2008 in which claims 1, 4, 11, 29, 32, 39, 58 and 61 were rejected.

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Claims 1, 29, 58 and 61 are rejected under 35 U.S.C. 103(a) as being anticipated by Fiorini et al (US Patent No. 6760596) in view of Yano et al (US Patent No. 6501789).

The applicant disagrees with these rejections and refers to the arguments present in the Request for reconsideration filed March 3, 2008, in the Remarks Section of the Amendment A submitted on September 10, 2007 and in the Remarks Section of the Amendment B submitted on December 20, 2007. New arguments are presented below.

The Examiner practically modified the rejection of the previous office action by substituting the reference of Bourlas et al (US 6760596) by Yano et al (US Patent No. 6501789).

The applicant is of opinion that Examiner's arguments are inconsistent and inaccurate.

First, in the previous Office Action (OA) of January 23, 2008, the Examiner admitted that Fiorini et al failed to disclose determining a frame or block error rate of the radio uplink channel in reference to independent claims 1 and 29. Then the question is: if Fiorinio et al do not disclose **determining a frame or block error rate** of the radio uplink channel, as admitted by the Examiner, how then Examiner stated in the present Office Action of April 8, 2008 that Fiorirni et al "discloses adjusting C/I by adjusting spreading factor to ensure a desired frame or block error rate to maintain acceptable link quality (changing the spreading factor if frame or block error rate meets a selected criterion)." In other words, if Fiorini et al do not **determine a frame or block error rate,** how then the spreading

2

factor can be changed if **frame or block error rate** meets a selected criterion, whereas Fiorini et al do not **determine a frame or block error rate,** as admitted by the Examiner?

Moreover, after stating in the present OA of April 8, 2008 that Fiorini et al "discloses adjusting C/I by adjusting spreading factor to ensure a desired frame or block error rate to maintain acceptable link quality (changing the spreading factor if frame or block error rate meets a selected criterion).", the Examiner further contradicts himself by further alleging in the present OA of April 8, 2008 that Fiorini et al **failed** to disclose "changing spreading factor if said frame or said block error rate meets a selected criterion.", i.e., making two statement side-by-side contradicting each other.

Furthermore, the Examiner alleges that Yano et al disclose measuring bit error rate of the uplink along with spreading factor (col. 6, lines 30-60). But the question remains: is it relevant to the present patent application?

It is not clear to the applicant why this reference of Yano et al is relevant to the present invention because measuring SNR of a channel for signals with a predetermined spreading factor is well known in the art.

Yano et al disclose SNR measurements performed for signals with different spreading factors as a part of signal processing for quick determining BER (bit-error rate) in order a) to set a target signal-to-noise ratio (Eb/N0) which achieves desired bit rate in a short time, b) to reduce a control time which is required in order to obtain a desired bit error rate in transmission power control, and c) to estimate a bit error rate in predetermined Eb/N0 in a short time (see Yano et al col. 3, lines 42-51). The detailed description provided by Yano et al, e.g., in reference to Figures 1-3 (see text from col. 5 line 2 through col. 6 line 61) clearly explains the signal processing using de-spreading process performed in order to achieve the

goals of the invention as specified herein (see Yano et al col. 3, lines 42-51) and has nothing to do with "changing spreading factor to counteract fluctuations" as recited in claims 1 and 29 of the present invention. Yano et al disclose a typical prior art procedure wherein in order to achieve the desired SNR (signal-to-noise ratio) Eb/N0, the signal power (and not the spreading factor) is adjusted based on the "quick" BER measurements utilizing de-spreading processing.

Thus the goal of BER measurements disclosed by Yano et al is to set a target signal-to-noise ratio (Eb/N0), i.e., the transmit power (see Background section of Yano et al), in order to achieve the desired BER as stated by the Examiner on page 3 of the Office Action of April 28, 2008, which is different from the methodology of the present invention, wherein **the spreading factor** is adopted "to **counteract** said fluctuation in order to keep the predetermined parameter (e.g., a signal-to-interference ratio) related to said fluctuation substantially near a threshold value by increasing or decreasing said spreading factor, wherein said changing the spreading factor is carried out only if said frame or said block error rate meets a selected criterion", as recited in claims 1 and 29 of the present invention. In other words, Yano et al **do not disclose adopting** (changing) spreading factor to counteract fluctuations at all.

Moreover, the applicant is of opinion that teachings of both of Fiorini et al and Yano et al, before they are "**combined**" as alleged by the Examiner, do not disclose all limitations of claims 1 and 29 of the present invention as required by the MPEP Paragraph 2143. As was pointed out in the Amendment B submitted on December 20, 2007, Fiorini et al not only do not disclose the step of "**further determining a frame or block error rate of said radio uplink channel**", as recited in claim 1 (the same is applied to claim 29), but do not disclose a **dependence** of the spreading factor on **two** parameters: a **predetermined parameter such as C/R**

4

ratio and the **frame or block error rate** (as recited in claims 1 and 29 of the present invention), which is different from what is taught by Fiorini et al. describing a **dependence** only on **one parameter**, e.g., C/R ratio, but not on both. Yano et al do not disclose any adaptation of the spreading factor. Therefore, **dependence** of the spreading factor on **two** parameters: a **predetermined parameter such as C/R ratio** and the **frame or block error rate** (as recited in claims 1 and 29 of the present invention), is not disclosed by both references of Fiorini et al and Yano et al.

But even if we assume for the sake of argument only that Fiorini et al and Yano et al disclose all limitations of claims 1 and 29 of the present invention, combining them would not make any sense and practically teach away from the subject matter of the present invention because Yano et al **do not disclose adopting** (changing) **spreading factor** to counteract fluctuations at all.

Furthermore, the Office for practical purposes ignored MPEP Paragraph 2143 which requires to provide a proof of suggestion or motivation for combining references, because any patent issued in the past and in the future can be declared invalid by combining in hindsight separate parts known from different sources.

Thus, claims 1 and 29 of the present invention are novel and not obvious over Fiorini et al under 35 U.S.C. 103(a) in view of Yano et al. Moreover, the novelty of claims 58 and 61 is provided by the novelty and non-obviousness of claims 1 and 29 under 35 U.S.C. 103(a) as being anticipated by Fiorini et al over Yano et al.

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Claims 4, 11, 32 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable under 35 U.S.C. 102(e) as being anticipated by Fiorini et al. in view of Yano et al and further in view of Sadri et al (U.S. Patent No.: 6,690,652).

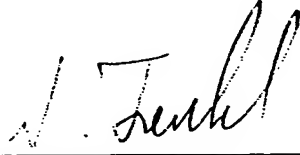The novelty of dependent claims 4, 11, 32 and 39 is provided

by the novelty and non-obviousness of independent claims 1 and 29 under 35 U.S.C. 103(a), as shown herein. Also more arguments can be made in regard to motivation to combine references and problem to be solved to rebut this rejection.

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The rejections of the Official Action of January 23, 2008, having been obviated by this amendment or shown to be inapplicable, withdrawal thereof is requested, and passage of the claims to issue is solicited.

Respectfully submitted,

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